

Senator Todd Weiler proposes the following substitute bill:

INDIGENT COUNSEL IN JUVENILE COURT

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Eric K. Hutchings

LONG TITLE

General Description:

This bill amends provisions related to the appointment of counsel for indigents in juvenile court proceedings.

Highlighted Provisions:

This bill:

- ▶ provides for a parent, legal guardian, or child who is found to be indigent, the option of legal counsel appointed by the court under certain circumstances;
- ▶ defines when, and under what circumstances, court appointed legal counsel can be used for indigent representation;
- ▶ describes when a child can be represented by an attorney guardian ad litem in cases requiring counsel for indigents;
- ▶ describes payment and reimbursement practices when legal counsel is appointed by the court for indigent representation; and
- ▶ make technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **78A-6-317**, as last amended by Laws of Utah 2010, Chapter 247

29 REPEALS AND REENACTS:

30 **78A-6-1111**, as last amended by Laws of Utah 2011, Chapter 265

31

32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **78A-6-317** is amended to read:

34 **78A-6-317. All proceedings -- Persons entitled to be present.**

35 (1) A child who is the subject of a juvenile court hearing, any person entitled to notice
36 pursuant to Section **78A-6-306** or **78A-6-310**, preadoptive parents, foster parents, and any
37 relative providing care for the child, are:

38 (a) entitled to notice of, and to be present at, each hearing and proceeding held under
39 this part, including administrative reviews; and

40 (b) have a right to be heard at each hearing and proceeding described in Subsection
41 (1)(a).

42 (2) A child shall be represented at each hearing by the guardian ad litem appointed to
43 the child's case by the court. The child has a right to be present at each hearing, subject to the
44 discretion of the guardian ad litem or the court regarding any possible detriment to the child.

45 (3) (a) The parent or guardian of a child who is the subject of a petition under this part
46 has the right to be represented by counsel, and to present evidence, at each hearing.

47 (b) When it appears to the court that a parent or guardian of the child desires counsel
48 but is financially unable to afford and cannot for that reason employ counsel, [~~and the child has
49 been placed in out-of-home care, or the petitioner is recommending that the child be placed in
50 out-of-home care;~~] the court shall appoint counsel as provided in Section **78A-6-1111**.

51 (4) In every abuse, neglect, or dependency proceeding under this chapter, the court
52 shall order that the child be represented by a guardian ad litem, in accordance with Section
53 **78A-6-902**. The guardian ad litem shall represent the best interest of the child, in accordance
54 with the requirements of that section, at the shelter hearing and at all subsequent court and
55 administrative proceedings, including any proceeding for termination of parental rights in
56 accordance with Part 5, Termination of Parental Rights Act.

57 (5) (a) Except as provided in Subsection (5)(b), and notwithstanding any other
58 provision of law:

59 (i) counsel for all parties to the action shall be given access to all records, maintained
60 by the division or any other state or local public agency, that are relevant to the abuse, neglect,
61 or dependency proceeding under this chapter; and

62 (ii) if the natural parent of a child is not represented by counsel, the natural parent shall
63 have access to the records described in Subsection (5)(a)(i).

64 (b) The disclosures described in Subsection (5)(a) are not required in the following
65 circumstances:

66 (i) subject to Subsection (5)(c), the division or other state or local public agency did not
67 originally create the record being requested;

68 (ii) disclosure of the record would jeopardize the life or physical safety of a child who
69 has been a victim of abuse or neglect, or any person who provided substitute care for the child;

70 (iii) disclosure of the record would jeopardize the anonymity of the person or persons
71 making the initial report of abuse or neglect or any others involved in the subsequent
72 investigation;

73 (iv) disclosure of the record would jeopardize the life or physical safety of a person
74 who has been a victim of domestic violence;

75 (v) the record is a report maintained in the Management Information System, for which
76 a finding of unsubstantiated, unsupported, or without merit has been made, unless the person
77 requesting the information is the alleged perpetrator in the report or counsel for the alleged
78 perpetrator in the report; or

79 (vi) the record is a Children's Justice Center investigative interview, video or audio, the
80 release of which is governed by Section [77-37-4](#).

81 (c) If a disclosure is denied under Subsection (5)(b)(i), the division shall inform the
82 person making the request of the following:

83 (i) the existence of all records in the possession of the division or any other state or
84 local public agency;

85 (ii) the name and address of the person or agency that originally created the record; and

86 (iii) that the person must seek access to the record from the person or agency that
87 originally created the record.

88 Section 2. Section [78A-6-1111](#) is repealed and reenacted to read:

89 **78A-6-1111. Right to counsel -- Appointment of counsel for indigent -- Costs.**

90 (1) (a) In any action in juvenile court initiated by the state, a political subdivision of the
91 state, or a private party, the parents, legal guardian, and the minor, where applicable, shall be
92 informed that they may be represented by counsel at every stage of the proceedings.

93 (b) In any action initiated by a private party, the parents or legal guardian shall have the
94 right to employ counsel of their own choice at their own expense.

95 (c) If, in any action initiated by the state or a political subdivision of the state under
96 Part 3, Abuse, Neglect, and Dependency Proceedings; Part 5, Termination of Parental Rights
97 Act; or Part 10, Adult Offenses, of this chapter or under Section [78A-6-1101](#), a parent or legal
98 guardian requests an attorney and is found by the court to be indigent, counsel shall be
99 appointed by the court to represent the parent or legal guardian in all proceedings directly
100 related to the petition or motion filed by the state, or a political subdivision of the state, subject
101 to the provisions of this section.

102 (d) In any action initiated by the state, a political subdivision of the state, or a private
103 party under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5, Termination of
104 Parental Rights Act, of this chapter, the child shall be represented by a guardian ad litem in
105 accordance with Sections [78A-6-317](#) and [78A-6-902](#). The child shall also be represented by an
106 attorney guardian ad litem in other actions initiated under this chapter when appointed by the
107 court under Section [78A-6-902](#) or as otherwise provided by law.

108 (e) In any action initiated by the state or a political subdivision of the state under Part
109 6, Delinquency and Criminal Actions, or Part 7, Transfer of Jurisdiction, of this chapter, or
110 against a minor under Section [78A-6-1101](#), the parents or legal guardian and the minor shall be
111 informed that the minor may be represented by counsel at every stage of the proceedings and
112 that if the minor is found to be indigent, counsel shall be appointed by the court to represent the
113 minor in all proceedings directly related to the petition or motion filed by the state or a political
114 subdivision of the state, subject to the provisions of this section.

115 (f) Indigency of a parent, legal guardian, or minor shall be determined in accordance
116 with the process and procedure defined in Section [77-32-202](#). The court shall take into account
117 the income and financial ability of the parent or legal guardian to retain counsel in determining
118 the indigency of the minor.

119 (g) The cost of appointed counsel for a party found to be indigent, including the cost of
120 counsel and expense of the first appeal, shall be paid by the county in which the trial court
121 proceedings are held. Counties may levy and collect taxes for these purposes.

122 (2) Counsel appointed by the court may not provide representation as court-appointed
123 counsel for a parent or legal guardian in any action initiated by, or in any proceeding to modify
124 court orders in a proceeding initiated by, a private party.

125 (3) If the county responsible to provide legal counsel for an indigent under Subsection
126 (1)(g) has arranged by contract to provide services, the court shall appoint the contracting
127 attorney as legal counsel to represent that indigent.

128 (4) The court may order a parent or legal guardian for whom counsel is appointed, and
129 the parents or legal guardian of any minor for whom counsel is appointed, to reimburse the
130 county for the cost of appointed counsel.

131 (5) The state, or an agency of the state, may not be ordered to reimburse the county for
132 expenses incurred under Subsection (1)(g).